

## LOCAL PUBLIC AND PUBLIC SCHOOL CONTRACTS LAWS - COOPERATIVE PURCHASING

### 5:34-7.1 Applicability and authority

- (a) The rules in this subchapter shall be known as the Cooperative Purchasing Rules.
- (b) These rules shall apply to all contracting units.
- (c) This subchapter is adopted under the authority of P.L. 1999, c. 440 (N.J.S.A. 40A:11-11).
- (d) Copies of all cooperative purchasing forms are available from the Division of Local Government Services at PO Box 803, Trenton, New Jersey 08625-0803 or at the Division's website at [www.state.nj.us/dca/lgs/lpcl/copur/mstr\\_2001\\_form\\_r1.pdf](http://www.state.nj.us/dca/lgs/lpcl/copur/mstr_2001_form_r1.pdf).
- (e) When the lead agency of a cooperative pricing system, joint purchasing system or regional cooperative pricing system established and properly registered with the Division is a board of education or educational service commission the provision and performance of goods and services shall be conducted pursuant to the Public School Contracts Law (N.J.S.A. 18A:18A-1 et seq.). All other lead agencies shall follow the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.).
- (f) Boards of education as defined in N.J.S.A. 18A:18A-2 that pursue joint purchasing as described in N.J.S.A. 18A:18A-11 shall be subject to the rules set forth in this subchapter.

Amended by R.1995 d.633, effective December 4, 1995. Amended by R.2000 d.485, effective December 4, 2000.

### 5:34-7.2 Definitions

The following words and terms used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Application" means the forms and all supporting documents for creation, amendment or renewal of a cooperative purchasing system.

"Commodity resale system" means a purchasing system in which a local contracting unit purchases either gasoline, diesel fuel, snow removal chemicals, public works materials and supplies, including road and roadway construction materials, or any other such materials as may be approved by the Director for its own consumption and then sells all or a portion thereof to another local contracting unit.

"Contracting unit" means any county; municipality; board of education; or any board, commission, committee, authority or agency, which is not a State board, commission or committee, authority or agency, and which has administrative jurisdiction over any district, project, or facility, included or operating in whole or in part within the territorial

boundaries of any county or municipality which exercises functions which are appropriate for the exercise by one or more units of local government or board of education and which has statutory power to make purchases and enter into contracts awarded by a contracting agent for the provision or performance of goods or services.

"Cooperative purchasing system" means a cooperative pricing system, joint purchasing system, commodity resale system, county cooperative contract purchasing system or regional cooperative pricing system which has been approved and registered pursuant to this subchapter.

"County cooperative contract purchasing system" means a cooperative purchasing system that shall only be formed by a county and in which the county advertises for bids and awards a contract to the successful vendor.

"Energy" means gas supply service or gas related service or electric generation service or electric related service as set forth in the Electric Discount and Energy Competition Act (P.L. 1999, c.23) and the Interim Government Energy Aggregation Program Standards promulgated by the Board of Public Utilities on June 24, 1999.

"Form CCCP-1917" means Request For Registration Or Modification of a County Cooperative Contract Purchasing System which contains the following information: action requested; name of the county cooperative contract purchasing system; name of contract, address, and phone number of lead agency; and certification of compliance with N.J.S.A. 40A:11-1 et seq.

"Form CP-2001" means Request For Registration Or Modification of a Cooperative Purchasing System which contains the following information: action requested; name of cooperative purchasing system; name of contact, address, and phone number of lead agency; name of participating contracting units affected by request; and certification of compliance with N.J.S.A. 40A:11-1 et seq. and 18A:18A-1 et seq., as appropriate.

"Form CP-2060" means a Request for Registration or Modification of a Commodity Resale System which contains the following information: action requested, identification of the lead agency (seller), participating contracting units (purchaser) and commodity being resold.

"Joint purchasing system" means a cooperative purchasing system in which the lead agency serves as the purchasing agent for the membership of the system with all of the duties and responsibilities attendant thereto. The lead agency advertises for bids and awards a single contract to a vendor providing for the payment to the contractor for its own needs and for the needs of the participating registered members of the system. The only contractual relationship is between the lead agency and the vendor.

"Lead agency" means the contracting unit which is responsible for the management of the cooperative purchasing system.

"Regional cooperative pricing system" means a cooperative pricing system composed of two or more registered cooperative pricing systems and their participating contracting units which have agreed to join together for the provision and performance of goods and services, including the purchase of energy.

"Registered member" means a contracting unit which has been approved by the Director for participation in a cooperative purchasing system.

"Snow removal chemicals" means snow grits, calcium chloride (rock salt), sand or similar substance used for deicing or improving vehicular traction on snow or ice covered roadways.

Amended by R.1995 d.633, effective December 4, 1995. Amended by R.2000 d.485, effective December 4, 2000.

### **5:34-7.3 Cooperative pricing system or joint purchasing system creation**

- (a) Two or more contracting units may join together to form a cooperative pricing system or a joint purchasing system for the provision and performance of goods and services.
- (b) The contracting unit designated as the lead agency shall authorize the creation of the system by resolution. The authorizing resolution shall identify the system established as either a joint purchasing system or a cooperative pricing system.
- (c) Motions made, carried, and recorded in the written minutes of a business meeting of a board of education shall be considered to be the same as a resolution.

Amended by R.1995 d.633, effective December 4, 1995. Amended by R.2000 d.485, effective December 4, 2000.

### **5:34-7.4 Cooperative pricing system or joint purchasing system formal agreement**

- (a) A cooperative pricing system or joint purchasing system shall be based on a formal agreement entered into between the lead agency and each contracting unit. Each agreement shall be authorized by resolution.
- (b) At a minimum, the formal agreement shall include the following:
  - 1. Reference to the authorizing statute;
  - 2. Identification of the type of purchasing system;
  - 3. Description of the items of the goods and services to be purchased;
  - 4. The manner of advertising for bids and of awarding contracts;
  - 5. Clear and specific assignment of responsibilities, duties and rights of all contracting units;
  - 6. Provision for any sharing of administrative costs and/or payment for goods and services purchased, together with any necessary standards of performance;
  - 7. Length of the agreement not to exceed 5 years pursuant to N.J.A.C. 5:34-7.5(f);

8. The name of the lead agency for the system:
  - i. As an option, the responsibility of serving as lead agency may rotate, at the most once a year, among the registered members. Provision for this rotation shall be included in the agreement;
  - ii. Rotation of lead agency responsibilities among registered members shall not invalidate contracts or purchase orders with contractors that are in effect at the time of rotation;
  - iii. The Director shall be notified in writing within 30 days of any change in the lead agency; and
9. A requirement that the system identifier shall appear on all documentation related to purchases made through the system, including bidding documents, purchase orders, vouchers, contracts and records.

Amended by R.1995 d.633, effective December 4, 1995. Amended by R.2000 d.485, effective December 4, 2000.

#### **5:34-7.5 Cooperative pricing system or joint purchasing system registration**

- (a) A cooperative pricing system or joint purchasing system shall be subject to registration with and approval by the Director.
- (b) The lead agency of a proposed system shall apply to the Director on behalf of the system's participating contracting units.
- (c) Applications shall be made on Form CP-2001.
- (d) The Director shall act upon the application within the time provided for review pursuant to N.J.A.C. 5:34-7.28.
- (e) In reviewing the application, the Director shall utilize the following criteria, as established by N.J.S.A. 40A:11-11:
  1. Provision for maintaining adequate records and orderly procedures to facilitate audit and efficient administration;
  2. Adequacy of public disclosure of such actions as are taken by the participants;
  3. Adequacy of procedures to facilitate compliance with all provisions of the Local Public Contracts Law, Public School Contracts Law and corresponding rules; and
  4. Clarity of provisions to assure that the responsibilities of the respective parties are understood.
- (f) Approval shall be for a period not to exceed five years, and shall be limited to the terms, participants and scope of services presented for approval. Any subsequent changes shall be submitted to the Director on Form CP- 2001.

- (g) The lead agency shall notify the Director in writing of a decision to terminate the registration of the system prior to its approved expiration date.

Amended by R.1995 d.633, effective December 4, 1995. Amended by R.2000 d.485, effective December 4, 2000.

#### **5:34-7.6 Cooperative pricing system or joint purchasing system membership registration**

- (a) A contracting unit may apply for membership in an approved cooperative purchasing system by passage of a resolution and executing a formal agreement with the lead agency.
- (b) The lead agency shall apply to the Director for approval on behalf of the proposed new member on Form CP-2001.
- (c) The Director shall act upon the application within the time provided for review pursuant to N.J.A.C. 5:34-7.28.
- (d) Participation in the system for all registered members terminates on the system expiration date assigned by the Director.
- (e) The lead agency shall notify the Director in writing within five days of the withdrawal of any registered member from an approved cooperative purchasing system.
- (f) A registered member which has formally terminated its participation in an approved cooperative purchasing system, may renew its membership by following the procedure defined in this section.
- (g) A registered member of a cooperative purchasing system shall retain membership in a system until the member formally withdraws from participation or the system is dissolved.

Amended by R.1995 d.142, effective March 20, 1995. Amended by R.1995 d.633, effective December 4, 1995. Amended by R.2000 d.485, effective December 4, 2000.

#### **5:34-7.7 Cooperative pricing system or joint purchasing system identifier**

- (a) The Director shall assign an alpha-numeric system identifier to each cooperative pricing system or joint purchasing system at the time of its approval.
- (b) The system identifier shall be included on all bidding documents, purchase orders, vouchers, contracts and records relating to the operations of the approved cooperative purchasing system.

Amended by R.1995 d.633, effective December 4, 1995. Amended by R.2000 d.485, effective December 4, 2000.

### **5:34-7.8 Cooperative pricing system or joint purchasing system renewal**

- (a) Documents requesting the renewal of the registration of a cooperative pricing system or joint purchasing system shall be submitted to the Director for review and approval prior to the date set by the Director for the expiration of the system's registration.
- (b) The lead agency shall authorize the renewal of the system by resolution.
- (c) The lead agency shall apply to the Director on behalf of its membership for system renewal for a period not to exceed five years.
- (d) The renewal application package shall at a minimum include the following:
  - 1. Form CP-2001;
  - 2. Lead agency resolution reauthorizing the system; and
  - 3. A list of the current membership of the System.
- (e) The time for the review-approval period shall commence only upon the determination by the Director that the application for system renewal is complete.
- (f) The lead agency shall notify the Director in writing of a decision not to renew the system's registration.

Amended by R.1995 d.142, effective March 20, 1995. Amended by R.1995 d.633, effective December 4, 1995. Amended by R.2000 d.485, effective December 4, 2000.

### **5:34-7.9 Cooperative pricing system or joint purchasing system administrative responsibilities**

- (a) Upon approval of system registration and annually thereafter either on the anniversary of the registration of the system or in January of each succeeding year, the lead agency shall publish in its official newspaper a notice similar in content to the following:

#### **Notice of Cooperative Purchasing**

(Name of lead agency) acts as lead agency in a cooperative purchasing agreement in cooperation with (list number) registered members. Under this system, the (name of lead agency) solicits competitive bids for certain items purchased by registered members. This is a (specify, joint purchasing system or cooperative pricing system) as defined and regulated by N.J.A.C. 5:34-7. Interested citizens or vendors may obtain information regarding the manner of operation of this system by contacting (name, address and phone number of lead agency). System

Identifier \_\_\_\_\_, approved by the New Jersey Division of Local Government Services through (expiration date of the system).

- (b) Prior to the advertisement for bids, a registered member may request a review copy of the bid specifications.
- (c) Before seeking bids, the lead agency shall obtain from the registered members:
  - 1. In the case of a joint purchasing system, the exact quantity of goods to be provided or services to be performed that the lead agency shall purchase for the registered members.
  - 2. In the case of a cooperative pricing system, the estimated quantities that each registered member proposes to contract for during the life of the master contract.
- (d) The lead agency of a joint purchasing system shall disclose in the specifications, the quantities and details of delivery required.
- (e) The lead agency of a cooperative pricing system shall include in the specifications lead agency requirements, stated in definite quantities; and registered member requirements, stated as individual estimated needs.
  - 1. The specification shall list the registered members who have submitted estimates, their delivery address, their estimated maximum quantities and other relevant information to permit the bidder to understand what is potentially involved.
- (f) The lead agency in a joint purchasing system and the individual registered members in a cooperative pricing system shall be responsible for compliance with the change order requirements of N.J.A.C. 5:34-4.
- (g) Each registered member may, by resolution, provide for and authorize payment in advance for estimated administrative costs to be paid to the lead agency for a joint purchasing or cooperative pricing system. Such administrative costs shall be budgeted by the lead agency as a Special Item of Revenue offset with appropriations.
- (h) No contract shall be made by any registered member for a price which exceeds any other price available to the registered member.

Amended by R.1995 d.633, effective December 4, 1995. Recodified from N.J.A.C. 5:34-7.12 and amended by R.2000 d.485, effective December 4, 2000.

#### **5:34-7.10 Cooperative purchasing system requirement for bids**

- (a) Each request for bids shall contain the following:
  - 1. Language requiring uniform bid price(s) for both the lead agency and registered members. A provision with respect to the registered members shall be included substantially as follows:

#### **REQUIREMENTS OF REGISTERED MEMBERS**

☐ Check here if willing to provide the goods or services herein bid upon to registered members of the (System Name and System Identifier) who

have submitted estimates, without substitution or deviation from specifications, size, features, quality, price or availability as herein set forth. It is understood that orders will be placed directly by the registered members identified herein by separate contract, subject to the overall terms of the master contract to be awarded by the (name of the lead agency), and that no additional service or delivery charges will be allowed except as permitted by these specifications.

[ ] Check here if not willing to extend prices to registered members of the (System Name and System Identifier) who have submitted estimates as described above. It is understood that this will not adversely affect consideration of this bid with respect to the needs of (name of the lead agency).

2. A statement as to the procedure to be followed in the event that the lowest responsible bidder, in the bid document, declines to extend prices to the registered members who submitted estimates. Examples of such procedures include:
  - i. The contract for the stated needs of the lead agency will be awarded to the lowest responsible bidder, and new bids will be sought and a master contract subsequently awarded with respect to the needs of the registered members who have submitted estimates;
  - ii. The contract for the needs of the lead agency will be awarded to the lowest responsible bidder, and a master contract for the registered members who have submitted estimates will be awarded to the next lowest bidder whose bid agrees to extend prices; or
  - iii. The contract for the needs of the lead agency will be awarded, all other bids shall be rejected and no further bids will be sought by the lead agency on behalf of the registered members who have submitted estimates.
- (b) The master contract shall state that the bid prices may be extended to registered members who have not submitted estimates prior to the advertisement for bids with the written approval of the lead agency and the contractor.
- (c) A statement as to whether or not insurance certificates and/or performance bonds are necessary.

Amended by R.1995 d.633, effective December 4, 1995. Recodified from N.J.A.C. 5:34-7.13 and amended by R.2000 d.485, effective December 4, 2000.

### **5:34-7.11 Cooperative pricing system financial and contractual details**



- (a) The lead agency shall certify the funds available for its own needs.
- (b) The master contract executed shall provide for the following:
  - 1. The quantities ordered for the lead agency's own needs; and
  - 2. The estimated aggregate quantities to be ordered by the registered members who submitted estimates, subject to the specifications and prices set forth in the master contract.
- (c) The lead agency shall supply the registered members of the cooperative pricing system who have submitted estimates, the name of the successful bidder, prices awarded and the contract identification number. A registered member may request a copy of the specifications. Each registered member who submitted estimates may then order directly from the vendor. If the cost of the order is under the bid threshold, and if the contracting agent is authorized to do so, then the contracting agent may issue a purchase order, pursuant to N.J.S.A. 40A:11-3a or 18A:18A-3a, as appropriate. If the cost of the order exceeds the bid threshold, then the contract must be awarded by resolution of the governing body in accordance with N.J.S.A. 40A:11-4a or 18A:18A-4a, as appropriate. The system identifier shall be affixed to each purchase order or contract and shown on all forms pertaining thereto.
- (d) Registered members who submit estimates shall not issue orders and contractors shall not make deliveries, that deviate from the specifications or price as set forth in the master contract.

Amended by R.1995 d.633, effective December 4, 1995. Recodified from N.J.A.C. 5:34-7.15 and amended by R.2000 d.485, effective December 4, 2000.

#### **5:34-7.12 Cooperative pricing system use of pre-existing contracts**

- (a) A registered member of a cooperative pricing system which has not submitted estimates to the lead agency before the advertisement for bids may participate in the resulting contract for that particular item only with the prior written approval of the lead agency and the contractor.
- (b) A contracting unit which is not a registered member of a cooperative pricing system at the time of the awarding of a contract may participate in the contract once it has become a registered member of the system and has received the written approval of the lead agency and the contractor.
- (c) This section shall not apply to joint purchasing systems.

Amended by R.1995 d.633, effective December 4, 1995. Recodified from N.J.A.C. 5:34-7.11 by R.2000 d.485, effective December 4, 2000.

#### **5:34-7.13 Regional cooperative pricing system**

- (a) Two or more registered cooperative pricing systems may join together for the provision and performance of goods and services, including the purchasing of energy. The registered membership of each individual cooperative pricing system shall be deemed to be a member of the regional cooperative pricing system upon submission to the Director a list of the membership of each system comprising the regional cooperative pricing system.
- (b) Registration of a regional cooperative pricing system shall be pursuant to the requirements set forth in N.J.A.C. 5:34-7.5.
- (c) When a municipality which has aggregated its residents or business customers for gas supply service or electric generation service becomes a member of a regional cooperative pricing system for the purpose of purchasing energy, it shall simultaneously notify the lead agency of the cooperative pricing system of which it is a member and the lead agency of the regional cooperative pricing system of the participation of its residential or business customers and their respective energy supply demands.

New Rule, R.2000 d.485, effective December 4, 2000.

#### **5:34-7.14 Joint purchasing systems financial and contractual details, exclusive of boards of education**

- (a) The financial and contractual details set forth in this section shall apply only to contracting units subject to the requirements of the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.). Boards of education shall be subject to the financial and contractual details set forth in the Public School Contracts Law (N.J.S.A. 18A:18A-1.1 et seq.) and the administrative requirements contained in N.J.A.C. 6:20.
- (b) In the case of a joint purchasing system, the lead agency shall comply with the certification of funds requirement of N.J.A.C. 5:30-5 with respect to the full amount of the contract and Division of Local Government Services' requirements for Encumbrance Accounting Systems.
- (c) The funds of the lead agency applicable to its own share of the contract to be awarded shall be charged to regular appropriations in its budget.
- (d) Prior to handling the funds of the other registered members, the lead agency shall request approval of the Director for a Dedication by Rider pursuant to N.J.S.A. 40A:4-39, entitled "Receipts from Other Agencies participating in the (Name of System) joint purchasing system, System Identifier \_\_\_\_\_." In order to meet the statutory requirement that expenditures under a Rider may be made only in accordance with the availability of funds, the following steps shall be taken:
  - 1. Prior to the award of contract, the chief financial officer of each registered member (other than the lead agency) shall issue a certificate of available funds, in accordance with N.J.A.C. 5:30-5.
  - 2. The contracting agent of each registered member, with authorization by resolution of the governing body if over the statutory bid limit, shall issue a

purchase order to the lead agency together with a copy of its certification of available funds.

3. The lead agency shall, in accordance with N.J.A.C. 5:30-5, issue its own certificate, covering the full amount of the proposed contract including both its own share and those of the registered members. The certificate shall be conditional with respect to the amounts due from the registered members so that the certificate shall read in part as in the following example:

\$5,000 From (Lead Agency) appropriation number 207, Road Department, Other Expenses.

\$2,000 Due from (Name of registered member) pursuant to its purchase order number 70243 and Certification of Available Funds dated \_\_\_\_\_, (Lead Agency) Dedication by Rider Account Number 7.

\$1,000 Due from (Name of registered member) per its purchase order Number A- 402 and Certification of Available Funds dated \_\_\_\_\_, (Lead Agency) Dedication by Rider Account Number 7.

\$8,000 Total Certified.

4. The lead agency shall then award the total contract to the successful bidder.
5. The lead agency shall not advance funds of its own to cover the purchase on behalf of the registered members but shall make payments only upon receipt of the funds. Payments to the lead agency shall be made promptly in accordance with an agreed-upon schedule, which may include making payment to the lead agency in advance of receipt of goods. The voucher providing for the advance payment shall indicate:

"Transfer of funds to (name of lead agency) as cash advance to enable it to purchase the following on behalf of (name of registered member) as Lead Agency in (name of joint purchasing system), System Identifier \_\_\_\_\_."  
"(Then list what is to be purchased.)"
6. Funds received by the lead agency as advances from registered members shall be:
  - i. Placed in a separate bank account established within the Rider and held in trust for the purpose of permitting the lead agency to serve as contracting agent for the awarding of joint purchasing contracts;
  - ii. Used only for the payment of actual bills to the contractors pursuant to the overall joint purchasing agreement; and
  - iii. Returned immediately to the registered member upon any determination that the full amount is not needed for payments as initially expected.

Amended by R.1995 d.633, effective December 4, 1995. Amended by R.2000 d.485, effective December 4, 2000.

**5:34-7.15 Commodity resale system registration**

- (a) A contracting unit which purchases gasoline, diesel fuel or snow removal chemicals, public works materials and supplies, including road and roadway construction materials or any other such materials as may be approved by the Director directly from a vendor for its own consumption, may resell a portion of that commodity to another local contracting unit.
- (b) All commodity resale systems shall be subject to an initial registration with and approval by the Director. In reviewing the application, the Director shall utilize the criteria set forth in N.J.A.C. 5:34-7.5(e).
- (c) Approval shall be for a period not to exceed five years.
- (d) The lead agency of the proposed system shall apply to the Director on behalf of the other participating unit(s).
- (e) Application shall be made on Form CP-2060.
- (f) The lead agency shall authorize the creation of the resale system by resolution.
- (g) The lead agency acting on behalf of itself and any participating contracting unit shall at the time of initial system registration or when a new member is added to the system, submit to the Director a copy of the purchase agreement or contract between the units and all confirming resolutions.
- (h) The Director shall act upon the application pursuant to N.J.A.C. 5:34- 7.10.
- (i) Any change in the status of the system, the addition or deletion of a member or commodity, shall be submitted by the lead agency to the Director on Form CP-2060.
- (j) The Director shall be notified in writing by the lead agency within 10 days of any change in the status of the commodity resale system.

New Rule, R.1995 d.633, effective December 4, 1995. Recodified from N.J.A.C. 5:34-7.17 and amended by R.2000 d.485, effective December 4, 2000.

**5:34-7.16 Commodity resale system renewal**

- (a) Documents requesting the renewal of the registration of a commodity resale system shall be submitted to the Director for review and approval 45 days prior to the date set by the Director for the expiration of the system's registration.
- (b) The lead agency shall apply to the Director for renewal of the Commodity Resale System for a period not to exceed five years.
- (c) The renewal package shall include the following:
  - 1. Form CP-2060;
  - 2. The lead agency resolution reauthorizing the system; and

3. A list of the current membership of the system.
- (d) The time for the review-approval period shall commence upon the determination by the Director that the application for system renewal is complete.
- (e) The lead agency shall notify the Director in writing of a decision not to renew the system's registration.

New Rule, R.1995 d.633, effective December 4, 1995. Recodified from N.J.A.C. 5:34-7.18 and amended by R.2000 d.485, effective December 4, 2000.

#### **5:34-7.17 Accounting requirements for commodity resale systems**

- (a) The accounting requirements set forth in this section shall apply only to contracting units subject to the requirements of the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.). Boards of education shall be subject to the financial and contractual details set forth in the Public School Contracts Law (N.J.S.A. 18A:18A-1.1 et seq.) and the administrative requirements contained in N.J.A.C. 6:20.
- (b) Expenditure of lead agency funds applicable to its own use of the commodity shall be charged to current fund appropriations in its annual budget.
- (c) The lead agency shall request approval of the Director for a Dedication by Rider pursuant to N.J.S.A. 40A:4-39, entitled "Receipts from Other Agencies participating in the (Name of System) Commodity Resale System, System Identifier." In order to meet the statutory requirement that expenditures under a Rider may be made only in accordance with the availability of funds, the following steps shall be taken:
  1. The authorized contracting agent of each registered member shall issue a purchase order to the lead agency, together with a copy of its certification of available funds, and resolution of the governing body if projected expenditures exceed the statutory bid threshold;
  2. The lead agency, at agreed upon intervals, shall submit to the participating members of the system an invoice for the amount of the commodity consumed. Payments to the lead agency shall be made by appropriation in the annual budget; and
  3. Funds received by the lead agency from registered members shall be:
    - i. Placed in a bank account established by Rider and held in trust; and
    - ii. Used only for the payment or purchase of the resale commodity consumed.

New Rule, R.1995 d.633, effective December 4, 1995. Recodified from N.J.A.C. 5:34-7.19 and amended by R.2000 d.485, effective December 4, 2000.

#### **5:34-7.18 Energy aggregation**

- (a) A municipality may provide energy supply to residents and businesses situated within its territorial boundaries.
- (b) A county government may enter into a contract for a government energy aggregation program only if one or more constituent municipalities in the county adopt an ordinance authorizing the county to enter into such a contract.
- (c) A county government energy aggregation program shall only be conducted for residential and business customers located within the constituent municipalities that have approved participation in the county's government aggregation program.
- (d) Only counties and municipalities acting pursuant to the conditions set forth in this chapter may aggregate residential and business customers for gas supply or for electric generation services.
- (e) A cooperative pricing system undertaking energy aggregation in which the lead agency is not a county or municipality and the membership includes a mix of local contracting units including municipalities and counties, shall not include municipalities and counties who seek to provide energy to residents and businesses.

New Rule, R.2000 d.485, effective December 4, 2000.

#### **5:34-7.19 Cooperative purchasing of energy**

- (a) Two or more contracting units may join together to form a cooperative pricing system for the sole specific purpose of purchasing energy, or an existing registered cooperative purchasing system may add energy as a commodity to be purchased, pursuant to the Electric Discount and Energy Competition Act (P.L. 1999, c.23) and the Interim Government Energy Aggregation Program Standards promulgated by the Board of Public Utilities.
- (b) The purchase of energy shall be subject to the terms and conditions of the bid specifications and a master contract. The specifications shall be drafted pursuant to Section 4.1a and 4.1b, Bidding Specifications of the Interim Government Energy Aggregation Program Standards promulgated by the Board of Public Utilities.
- (c) Take and pay contracts for the purchase of energy where the government aggregator commits to pay for a certain amount of energy, whether or not the energy is actually received or used by the government aggregator or participants in a cooperative pricing system are specifically prohibited.

New Rule, R.2000 d.485, effective December 4, 2000.

#### **5:34-7.20 Binding estimate option**

Notwithstanding any of the restrictions or conditions set forth in this chapter, the lead agency of a cooperative purchasing system shall determine prior to the solicitation of bids whether the estimates submitted by a duly registered member of the system shall be considered firm and binding or a member may withdraw its estimate even after a supplier

has been selected. The mechanism for determining systemwide consensus shall be the responsibility of the lead agency.

New Rule, R.2000 d.485, effective December 4, 2000.

#### **5:34-7.21 County cooperative contract purchasing system creation**

- (a) Only a county may establish a county cooperative contract purchasing system. The county, at its discretion and with the approval of the vendor, may permit contracting units located within the county's geographic boundaries to procure the provision and performance of goods and services for their own needs, subject to the specifications, terms and conditions set forth in the contract awarded by the county.
- (b) A county shall authorize the establishment of a county cooperative contract purchasing system by resolution.

New Rule, R.2000 d.485, effective December 4, 2000.

#### **5:34-7.22 County cooperative contract purchasing system registration**

- (a) A county cooperative contract purchasing system shall be subject to registration with and approval by the Director.
- (b) Application for registration shall be made on CCCP-1917.
- (c) The Director shall act upon the application within the time provided for review pursuant to N.J.A.C. 5:34-7.28.
- (d) In reviewing the application, the Director shall utilize the following criteria, as established by N.J.S.A. 40A:11-11(5):
  - 1. Provision for maintaining adequate records and orderly procedures to facilitate audit and efficient administration;
  - 2. Adequacy of public disclosure of such actions taken by the lead agency;
  - 3. Adequacy of procedures to facilitate compliance with all provisions of the Local Public Contracts Law and corresponding rules; and
  - 4. Clarity of provision to assure that the responsibilities of the respective parties are understood.
- (e) Approval shall be for a period not to exceed five years, and shall be limited to the terms and scope of services presented for approval. Any subsequent changes shall be submitted to the Director on Form CCCP-1917 for county cooperative contract purchasing system.
- (f) A county shall notify the Director in writing of a decision to terminate the registration of the system.

New Rule, R.2000 d.485, effective December 4, 2000.

### **5:34-7.23 County cooperative contract purchasing system identifier**

- (a) The Director shall assign a system identifier to each county cooperative contract purchasing system at the time of its approval.
- (b) The identifier shall be included on all contracts, purchase orders, bidding documents, vouchers and records relating to the operations of the county cooperative contract purchasing system.
- (c) The identifier shall be provided to each local contracting unit purchasing under the terms and conditions of a contract awarded by the county as a county cooperative contract purchasing system. The participating contracting units shall include the system identifier on all contracts, purchase orders, documents, vouchers and records relating to the purchases made through a county cooperative contract purchasing system.

New Rule, R.2000 d.485, effective December 4, 2000.

### **5:34-7.24 County cooperative contract purchasing system administrative responsibilities**

- (a) Upon approval of a county cooperative contract purchasing system registration and annually thereafter either on the anniversary of the registration of the system or in January of each succeeding year, the lead agency shall publish in its official newspaper a notice similar in content to the following:

#### **Notice of County Cooperative Contract Purchasing System**

The County of (name of county) acts as lead agency in a county cooperative contract purchasing system. Under this system, the County solicits competitive bids for certain items to be purchased. Local contracting units within the county may purchase under the terms and conditions of selected contracts awarded by the County without the necessity of securing formal bids. This is a county cooperative contract purchasing system as defined and regulated by N.J.A.C. 5:34-7. Interested citizens or vendors may obtain information regarding the manner of operation of this system by contacting (name, address and phone number of system contact). The System Name Is \_\_\_\_\_. The System Identifier is: \_\_\_\_\_. The Systems' establishment was approved by the Director of the Division of Local Government Services and has an expiration date of (expiration date).

- (b) The county shall make the contract number available to any contracting unit within the county which seeks to purchase under the terms of a contract awarded by the county.
- (c) A county managing a county cooperative contract purchasing system shall include in the specifications the county's own requirements, stated in definite quantities. The



county shall identify the contracting units which may purchase under the terms of the contract if awarded.

New Rule, R.2000 d.485, effective December 4, 2000.

#### **5:34-7.25 County cooperative contract purchasing system county requirement for bids**

(a) Each request for bids to be included in the county cooperative contract purchasing system by the county shall contain the following:

1. Language requiring uniform bid price(s) for both the county and registered members. A provision with respect to the registered members shall be included substantially as follows:

ACCOMMODATION OF LOCAL CONTRACTING UNITS WITHIN THE  
COUNTY OF (Name of County)

[ ] Check here if willing to provide the goods and services herein bid upon to local governmental contracting units located within the County of (insert name of county) (System Name and Identifier) without substitution or deviation from specifications, size features, quality, price or availability as herein set forth. It is understood that orders will be placed directly by the contracting units, subject to the overall terms of the contract to be awarded by the County of (name of the county), and that no additional service or delivery charges will be allowed except as permitted by these specifications.

[ ] Check here if not willing to extend prices to contracting units located in the County of (name of county) affect consideration of this bid with respect to the needs of (name of the lead agency).

2. A statement as to the procedure to be followed in the event that the lowest responsible bidder declines to extend prices to the registered members. The contract for the stated needs of the county will be awarded to the lowest responsible bidder, and specifically not made available to contracting units within the county.

New Rule, R.2000 d.485, effective December 4, 2000.

#### **5:34-7.26 County cooperative contract purchasing system renewal**

(a) Documents requesting the renewal of the registration of a county cooperative contract purchasing system shall be submitted to the Director for review and approval prior to the date set by the Director for the expiration of the system's registration.

(b) The county shall authorize the renewal of the system by resolution.

- (c) The county shall apply to the Director for system renewal for a period not to exceed five years.
- (d) The renewal application package shall at a minimum include the following:
  - 1. Form CCCP-1917; and
  - 2. County resolution reauthorizing the system.
- (e) The 10-day period for the review and approval of the renewal of a county cooperative contract purchasing system registration shall commence only upon the determination by the Director that the application renewal is complete.
- (f) The county shall notify the Director in writing of a decision not to renew the system's registration.

New Rule, R.2000 d.485, effective December 4, 2000.

#### **5:34-7.27 Member reports**

At the discretion of the lead agency for a cooperative purchasing system, county cooperative contract purchasing system and any energy cooperative pricing system, participants shall file such reports, forms or documents designated by the lead agency, setting forth the use and expenditures related to contracts executed by the participants of the cooperative purchasing system. Such reports may be used to track and evaluate the utilization of the contracts executed by the lead agency on behalf of the participants.

New Rule, R.2000 d.485, effective December 4, 2000.

#### **5:34-7.28 Time for review-all systems**

- (a) The Director shall approve or reject all applications within 45 days.
- (b) The 45 day review period shall commence only upon the determination by the Director that the application is complete.
- (c) Failure of the Director to act upon an application within 45 days shall constitute a default approval of the application for a period of five years or in the case of new membership, until the date previously approved by the Director for the termination of system registration pursuant to N.J.A.C. 5:34-7.5(f).

Amended by R.1995 d.633, effective December 4, 1995. Recodified from N.J.A.C. 5:34-7.10 by R.2000 d.485, effective December 4, 2000.

#### **5:34-7.29 The State of New Jersey's cooperative purchasing program**

- (a) The system identifier of 1 NJCP shall represent the State of New Jersey Cooperative Purchasing Program administered by the Division of Purchase and Property within the Department of the Treasury. This identifier shall be used by all contracting units

purchasing under the Division of Purchase and Property's Cooperative Purchasing Program.

- (b) Participation in the State Cooperative Purchasing (Pricing) Program does not require a formal agreement with the Division of Purchase and Property, nor is approval of the Director required.
- (c) Contracts awarded under a State Cooperative Purchasing contract that are in excess of the contracting units bid threshold shall be made by resolution of the governing body. A resolution of the governing body shall not be required for State Cooperative Purchasing contracts for textbooks or other educational material that were previously approved by a board of education as part of the board's adopted curriculum policies.
- (d) The terms and conditions of the contracts awarded by the State Division of Purchase and Property shall be binding upon the contracting unit and the vendor. When using a State contract, contracting units are not entitled to any bonding or indemnification protection that is provided to the State unless specifically extended to the contracting unit by the vendor. A vendor is not required to extend such protections, but may do so upon agreement with the contracting unit.
- (e) A correctly prepared and properly executed purchase order by a contracting unit shall serve as a contract between the contracting unit and a contractor awarded a contract pursuant to N.J.S.A. 40A:11-12 or 18A:18A-10. In addition to the system identifier, each purchase order shall include the State contract number on which the purchase is based.

Recodified from N.J.A.C. 5:34-7.16 and amended by R.2000 d.485, effective December 4, 2000.

**5:34-7.30 Application of N.J.S.A. 40A:11-5(4) or 18A:18A-5e: purchases at 10 percent less than State contract price**

- (a) In applying the provisions of N.J.S.A. 40A:11-5(4) or 18A:18A-5e, the purpose of purchasing identical materials, supplies or equipment, in the same quantities, under a State contract without public bidding, the following conditions shall apply. For the purpose of this section, the term contract item shall mean the item being purchased that is the identical material, supply or equipment.
  - 1. Quotations for the contract item shall not be received from any vendor to whom the State contract has been awarded and where such vendor has agreed to extend the contract pricing for the item to local contracting units pursuant to N.J.S.A. 52:25-16.1.
  - 2. When a State contract includes different prices based on the quantity or volume purchased, the contracting unit shall be based on quotations for identical quantity or volume levels.
  - 3. Terms and conditions of the State contract, as found in the Notice of Award related to length of contract, warranty, delivery and spotting terms, supply, costs, payment terms, installation and other related items (except bonding and indemnification provisions) are met by the vendor providing the quotation.

4. If the specification for a contract item in a Notice of Award includes a specific manufacturer's brand and model number, quotations shall be based on the same manufacturer's brand and model number.
5. If the specification for a contract item in a Notice of Award for the contract item is based on a performance specification, the contracting agent may receive quotations reflecting different manufacturer's brand and models, and when making the contract award, the contracting agent shall certify in writing that the item being purchased is identical to or exceeds the specification of the contract item.
6. Only those options or alternatives that are provided for in a Notice of Award may be purchased by a contracting unit. The addition of non-included options or alternates as a part of a contract award under this section is prohibited.

New Rule, R.2000 d.485, effective December 4, 2000.

### **5:34-7.31 Authority of Director**

- (a) The Director shall take whatever additional action deemed advisable to assure the orderly conduct of cooperative purchasing systems in accordance with sound financial administration in accordance with statutory responsibilities.
- (b) The Director shall prepare such guidelines as determined necessary to assist contracting units in the creation and administration of cooperative purchasing systems.

Recodified from 5:34-7.17 by R.1995 d.633, effective December 4, 1995. Recodified from 5:34-7.20 by R.2000 d.485, effective December 4, 2000.

### **5:34-7.32 Enforcement**

- (a) All cooperative purchasing systems shall comply with the provisions of these rules at all times. The lead agency of any cooperative purchasing system deemed by the Director to be in noncompliance shall be notified by certified mail. The lead agency shall explain in writing within 10 working days the steps being taken to correct the noncompliance. Failure of the lead agency to respond within the time provided shall result in the notification to the lead agency by the Director by certified mail to appear before the Director, or his or her designee. Notice shall be given at least 10 working days prior to the date of appearance and shall detail the nature of the alleged noncompliance. Failure to appear may result in the suspension or termination of the registration of the system.
- (b) No later than five days after an appearance required herein, the Director shall issue a written determination on the issue of regulatory compliance. A copy of the determination shall be forwarded by certified mail to the lead agency.

- (c) A determination of noncompliance shall result in the immediate commencement of a 15 day grace period. During this time, the lead agency shall rectify all items of noncompliance, to the satisfaction of the Director.
- (d) Failure of the lead agency to undertake such action as required by the Director to resolve the issue of noncompliance may result in the suspension or termination of the registration of the system.

Recodified from 5:34-7.18 by R.1995 d.633, effective December 4, 1995. Recodified from N.J.A.C. 5:34-7.21 by R.2000 d.485, effective December 4, 2000.